

# Water under the bridge?

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Jochen von Bernstorff and Philipp Dann's 'The Battle for International Law: South-North Perspectives on the Decolonization Era' (*Battle for International Law*) is an ambitious undertaking. The editors along with their gathered authors explore 'the battle' waged by the newly formed independent states, as they arrived on the international scene from prolonged periods of colonization. What they coin as the decolonization era (1950s-1970s) is a bridge between two significant periods: the 'end' of colonialism and imperialism that started in 1885 with the Berlin conference and the 'beginning of unipolar US hegemony in international relations of the 1980s and 1990s' (p. 9). This bridging period, they argue, is significant because of how newly independent states and their various interlocutors fought to shape the global order. Von Bernstorff & Dann note '[t]hese voices pulled various sites and fields into the discursive battle that was international law—fields as diverse as were the main protagonists and their strategies: negotiations on new fundamental multilateral treaties were turned into battle-sites' (p. 3).

In this brief reflection, I focus on the periodization on which the editors and the authors rely. In particular, the temporal period that they focus on opens up new vistas for those interested in the history of international law. Simultaneously, by limiting their temporal field of exploration, the editors may have narrowly construed the different iterations of decolonization. In this short commentary, I first signal to the book's significant contribution to a burgeoning body of literature that centers the global South in international law. Then, I think through some of the limitations of the editors understanding of decolonization.

## Forging new ground: Contributions to TWAIL 1

The gathered voices in this collection significantly contribute to our understanding of international law during this historic period. In particular, the various chapters further cement the central claims articulated by scholars working under the banner of Third World Approaches to International Law. [TWAIL](#), as it is commonly known, is a scholarly endeavor that seeks to understand and trace the role of colonialism and imperialism in the daily workings of modern international law, based on the experiences of racialized peoples of the global South. In pursuit of this goal, TWAIL scholars have described their efforts as falling within [two](#), and at times [three](#) axes. Of course, such periodization is [contested](#). In 2003, Antony Anghie and Bhupinder Chimni [argued](#) that TWAIL scholarship can be grouped into two specific categories: TWAIL 1 and TWAIL 2. Anghie and Chimni viewed the early international lawyers from the global South, such as Georges Abi-Saab, Mohammed Bedjaoui, and Ram P. Anand as TWAIL 1 scholars. These scholars were keen to work within the existing system of international law. [Their engagement](#), it is commonly believed, sought to reshape the existing inequities brought on by the violence of colonialism and imperialism by deploying international law to make it truly universal and more equitable. Von Bernstorff and Dann's *Battle for International Law* is a significant

contribution to our understanding of this specific period in TWAIL scholarship through the various concepts, institutions, and protagonists that they excavate.

In particular, von Bernstorff and Dann's collection offers much-needed nuance on how newly formed states and their representatives sought to deploy international law for their benefit. These representatives included both politicians and academics from the global South. For example, the respective sections of this collection attend to the various perspectives necessary to understand and complicate how newly formed states and their representatives operated within the conservative field of practice of international law. By exploring concepts (such as state contracts and the corporation) or institutions (like the International Court of Justice) or different protagonists (such as for example Ram P. Anand), the collection delivers specific historical and empirical evidence that illustrate how newly independent Third World states performed within the recently created global order.

## **Decolonization era**

Decolonization forms the backdrop to the ensuing analysis in the various chapters. The decolonization that the *Battle for International Law* is concerned with centers on newly independent nation states, purely situated in international law. International law of decolonization commenced with the articulation of the independence of colonized territories. It was initially encapsulated in article 22 of the [Covenant of the League of Nations](#). This was later taken up by Chapter XII of [United Nations Charter](#). From this vantage point, von Bernstorff and Dann's collection deploys the concept of decolonization as a material fact that was achieved through international law. Decolonization was the means by which new independent states were 'welcomed' into the global legal order.

There is a burgeoning body of literature that pursues the ideas of 'decolonize', 'decolonial', 'decolonizing', and 'decolonization' in various iterations. Von Bernstorff and Dann's decolonization does not engage with these scholarly interventions. In fact, their decolonization is vastly different from those set out in the scholarly engagements in various disciplines. For example, Latin American scholars like [Walter Mignolo](#) to Indigenous and Black scholars like [Silvia Rivera Cusicanqui](#), [Linda Tuhiwai Smith](#), [Franz Fanon](#), and [Es'kia Mphahlele](#) amongst others have contributed immensely to our understating of these crucial terms. These scholarly contributions investigate this concept from their disciplinary standpoints. They have facilitated the construction of emancipatory architectures of governance, social relations, and knowledge.

Yet, like any term employed in various places and spaces over time, decolonize, decolonial, decolonizing, and decolonization are now part of our everyday academic vernacular. Importantly we may have lost the meaning and scope of these terms. They may have taken on new meaning in new spaces of contestation. Such appropriation and 'capture' have necessitated [Eve Tuck and Wayne Yang](#) to assert that 'decolonization is not a metaphor'. They suggest the following: 'When we write about decolonization, we are not offering it as a metaphor; it is not an approximation of other experience of oppression. Decolonization is not a swappable term for other

things we want to do to improve our societies and schools. Decolonization doesn't have a synonym.'

Legal scholars too have ventured into this debate. Jeffery G. Hewitt and I have sought to build on the idea that decolonization is not metaphoric, and we do not have a synonym for it in law. In our forthcoming chapter titled 'Expanding the Circle in Rethinking Decolonizing Law', we argue that the current legal thinking on decolonization takes place within the very fabric of western law through ideas of 'sovereignty' and 'self-determination' for example. Building on our [earlier](#) scholarship, we suggest that there is a need to 'traverse the limitations' of western thinking by turning to non-western sites of knowledge production. We argue that we need to think beyond law and move beyond western institutions and western knowledge. The places in which decolonization occurs is just as important as who is engaged in the work of decolonization. (For further details on this aspect, please see our forthcoming chapter as well as the volume in general, [Xavier et al., \*Decolonizing Law: Indigenous, Third World and Settler Perspectives\*, Routledge 2021.](#))

From this perspective, von Bernstorff and Dann's *Battle for International Law* prompts important questions about their periodization and their framing of 1950s to 1970s as *Sattelzeit* (p.4). This period is imagined as the bridge from old colonialism and imperialism to the era of neo-colonialism. This is their decolonization era. Decolonization is outlined in the legal sense and the battle for international law was waged therein by the newly formed sovereigns from the global South. The narrative of the battle for international law in this period did not produce emancipation for the peoples of the Third World. Rather it is a story of how colonial and imperial institutions and practices were carried forward. It is a story of how these colonial and imperial practices became further embedded within the landscape of international law and its institutions.

Yet, this portrait painted by the editors may ignore the possibility that decolonization is yet to arrive, on an undisclosed date, sometime in the future without the use or need for international law. This narrative moreover privileges the role of the legal technocrats versed in the language of international law. To this end, [Karin Mickelson](#) has chronicled the different ways in which Third World scholars have held on to the tightrope of international law as they move between 'despair and hope'. Von Bernstorff and Dann's story of the failure of decolonization then removes the hope that is built into the resistance and strength of the Third World peoples and Indigenous peoples that have dared to survive and resist.

As I noted earlier, the contributions provide an important empirical view of 1950s to 1970s. The text contributes significantly to our understanding of the metrics of specific battles that help shape the periodization in TWAIL 1. Von Bernstorff and Dann's framing however erases the decolonial praxis of the past. It also erases the decolonial praxis that may have taken place outside the milieu of international law from 1950s to 1970s. If we take the metaphor of the bridge seriously, then what about the water that continues to flow beneath? What about the land that the bridge is built on?

Within settler colonial societies on Turtle Island in places like Canada, Indigenous peoples continue to resist the settler colonial impetus and the effects of the settler imprints of the [Indian Act of 1985](#). While they continue to feel the effects of ongoing [settlement](#) and [erasure](#), Indigenous peoples also have resisted, and continue to resist the colonial moves of the settler colonial state. Their resistance did not change from then to now, albeit, it may have taken on different forms. For example, [Beverley Jacobs](#) has chronicled the advocacy of the Haudenosaunee Confederacy before the League of Nations. This community, along with hundreds of other communities have used, and continue to use legal and non-legal means to push for decolonization.

Decolonization, as imagined within the grammar of international law, may have had a specific period in which it occurred. But this story of decolonization does not begin with international law. It does not end with law either.

The story of decolonization rather may begin with Irene Watson's ancestors as they resisted the '[muldarbi](#)', the demon spirits, that arrived on their shores. It continues with peoples of the Third World and Indigenous peoples building bridges between ourselves as a means to construct new edifices that will bring about a return of stolen land, reparations and other justice mechanisms that are the essential ingredients of decolonization.

